

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.**

**CRM-A-931-MA of 2016**

**Decided On : 21.03.2018**

Kaka Singh

....

Applicant

versus

State of Punjab and others

....

Respondents

**CORAM : HON'BLE MR. JUSTICE T. P. S. MANN.**

**HON'BLE MR. JUSTICE DEEPAK SIBAL.**

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Present : Mr. Kamal Narula, Advocate  
for the applicant.

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**DEEPAK SIBAL, J. :**

Through the instant application filed under Section 378(4) of the Code of Criminal Procedure, 1973 (for short – Cr.P.C.), the applicant seeks grant of leave against the judgment dated 21.01.2016 passed by the Additional Sessions Judge, Ferozepur (for short – the lower appellate court), through which the judgment dated 25.03.2015 passed by the Judicial Magistrate Ist Class, Ferozepur (for short – the trial Court) was reversed leading to the acquittal of respondents No.2 to 5.

Briefly stated, the case of the applicant/complainant was that on 04.02.2009 at about 6.00 A.M., the complainant woke up and found that the main iron gate of his house was missing as also that the brick pillars made on both side of the gate had been demolished. As per the applicant/complainant, the bricks had been taken by Tarlok Singh, Mohinder Singh, Kulwant Singh and Babbu Singh. When the complainant confronted the afore-referred persons, an altercation took place between

them and after sometime Tarlok Singh, Mohinder Singh, Kulwant Singh and Babbu with their respective weapons came to the house of the complainant and attacked him, as a result of which, he received several injuries. The cries of the complainant attracted his son and other relatives to the spot. On seeing them, the accused fled. The motive behind the occurrence was that the afore-referred accused persons wanted to forcibly encroach upon 1.5 marla of land belonging to the complainant and there was a dispute between them in that regard.

On the basis of preliminary evidence led by the complainant, the respondents were summoned and finding a prima facie case against them, the trial court charged them under Sections 323, 325, 324 read with Section 34 IPC. Since the accused did not plead guilty they were put on trial. During the pendency of the trial an application was moved for framing charge under Sections 379, 452 and 326 IPC which was declined by the trial court but on a challenge to such order the appellate court reversed the same and directed the trial court to frame charges under Sections 379, 452 and 326 IPC, in addition to the Sections under which charges had earlier been framed. Accordingly, charges under Sections 379, 452 and 326 IPC were also framed against the respondents-accused.

The trial court after sifting the evidence convicted respondents Tarlok Singh, Kulwant Singh, Harjinder Singh and Mohinder Singh under Sections 326, 325, 323, 411, 427, 452 read with Section 34 IPC. However, they were acquitted under Sections 379 IPC.

Respondents No.2 to 5 preferred an appeal against the afore-referred order of conviction which was allowed by the lower appellate court

through the judgment impugned in the present proceedings.

Learned counsel for the applicant while assailing the order of the lower appellate court submitted that through the impugned order the lower appellate court reversed a well-reasoned order passed by the trial court convicting the respondents. The arguments raised by the applicant before both the trial court and the lower appellate court were also reiterated.

The submissions made by learned counsel for the applicant have been considered but the same do not warrant acceptance.

The complainant-Kaka Singh appeared as PW-1 before the trial court and in his testimony did not make any mention with regard to any injuries on the person of accused. He further admitted that he had not seen the accused taking away the gate from his premises and that the gate of his house was installed in the street which was not owned by him. His statement further shows improvements made by him as in his statement under Section 161 Cr.P.C., he had not stated that Parkash Singh and Swaran Singh had received any injury whereas he stated so while appearing before the trial court. The testimony of PW-2 Parkash Singh cannot be read into evidence as he had not been subjected to any cross-examination. So far as PW-3 Swaran Singh and PW-4 Jaswinder Singh are concerned, they nowhere stated that they were present at the time of alleged theft of the gate or the bricks. As per PW-3 Swaran Singh, Parkash Singh had called him for the reason that a quarrel had taken place in the house of Kaka Singh but he does not disclose the nature of injuries inflicted by each of the accused. PW-3 Swaran Singh further deposed that he did not see committing of any theft of the gate. PW-6 Dr. A.B. Singh specifically deposed that injury no.1

which was declared to be grievous could have been inflicted by a friendly hand. The Investigating Officer ASI Gurdev Singh, while appearing as PW-9 admitted before the trial court that the complainant party also inflicted injuries on the accused. However, such injuries are not found disclosed in the deposition of the complainant party.

In view of the above as also the admitted fact that civil litigation is pending between the parties are enough reasons to uphold the impugned judgment acquitting respondents No.2 to 5.

In view of the above, the present application is found devoid of any merit and, therefore, dismissed.

Leave to appeal is declined.

**( T. P. S. MANN )**  
**JUDGE**

**( DEEPAK SIBAL )**  
**JUDGE**

**March 21, 2018**

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|----------------------------------|---|---------------|
| <i>Whether speaking/reasoned</i> | : | <i>Yes/No</i> |
| <i>Whether reportable</i>        | : | <i>Yes/No</i> |